

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Administrative Office	(2) MEETING DATE April 25, 2006	(3) CONTACT/PHONE David Edge (805) 781-5011	
(4) SUBJECT Discussion regarding the Grand Jury 2006 report on the San Luis Obispo County Planning Commission.			
(5) SUMMARY OF REQUEST Discuss and receive public input on the Grand Jury Report pertaining to the Planning Commission			
(6) RECOMMENDED ACTION Review a draft of the formal response and provide direction to staff as appropriate.			
(7) FUNDING SOURCE(S) N/A	(8) CURRENT YEAR COST N/A	(9) ANNUAL COST N/A	(10) BUDGETED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): The Grand Jury prepared the subject report. The Planning Department prepared the attached draft response.			
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____			
(13) SUPERVISOR DISTRICT(S) All		(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A	
(15) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Board Business (Time Est. <u>20 min.</u> )		(16) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A	
(17) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(18) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(19) Administrative Office Review			

(19) ADMINISTRATIVE OFFICE REVIEW

*Vincent Merino*

D-1  
4/25/06

# County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. D430 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



**DAVID EDGE**  
COUNTY ADMINISTRATOR

TO: Board of Supervisors

FROM: David Edge, County Administrator *Edge; da*

DATE: April 25, 2006

SUBJECT: Discussion regarding the 2006 Grand Jury Report on the San Luis Obispo County Planning Commission

## RECOMMENDATION:

Your Board should take public input, discuss Grand Jury Report and provide direction to staff on a formal response.

## DISCUSSION:

This item is intended to provide an opportunity for the Board of Supervisors to receive public comment and discuss the recent Grand Jury report on the Planning Commission in a broader context than the formally required response, which has a prescribed format. For background information, in addition to the Jury report itself, we have attached a draft of the Planning Department's required response along with a draft of the Board of Supervisors responses that we anticipate presenting to your Board at a subsequent meeting. The requirements of the formal response specify that the respondent should address each Finding and Recommendation, referred to them by the Jury, in the following manner:

Findings: Respondent agrees or disagrees (in whole or in part) with an explanation of any disagreement.

### Recommendations:

- A) Respondent will have (or has already) implemented.
- B) Respondent will not implement (with an explanation of why not).
- C) Respondent requires further analysis of recommendation (with explanation and timeframe).

Following discussion of this item we would look for guidance on those responses we propose on your behalf. In particular you should address the responses to Recommendations #4 and #5 of the Jury Report. Those recommendations suggest adoption of local "Conflict of Interest" provisions that go beyond state legal requirements. Our proposed responses are "will not implement" based upon the adequacy of existing law and the lack of justification in the Grand Jury report of what would be a significant expansion of the definition of conflict.

*Dr*

The merits of this particular Grand Jury Report have been debated widely in the media since its release. The Tribune newspaper has printed two "Viewpoints" from Planning Commissioners as well as an editorial and letters from the public. Board members and staff have received a number of e-mails and phone calls on the topic. The Grand Jury process itself has been put under the spotlight of public scrutiny. Grand Jury discussions are, by law, confidential, consequently we can only react and respond to the published material in any given Report. A lot of the debate surrounding this report on the activities of the county Planning Commission has focused on what the Jury members may, or may not, have considered in their discussions. Like the general public, staff is not privy to such discussions and Jury members are not permitted to reveal the details of such activities beyond what is reported formally. Consequently our proposed response is, purposely, limited in its response to the information presented in the Report. As the reader will note from the draft responses what this means is that we are unable to support agreeing or disagreeing with much of what is included in the Findings section of the Report because it appears as assumption not based on evidence presented in the Report itself. In turn, for the same reason, we are unable to suggest that you support any of the Recommendations presented by the Jury report unless you, independently, feel that they are ideas which merit further consideration. If you wish for further analysis and subsequent discussion on any of the Recommendations you should direct us to change the proposed response to reflect that direction, which represents option "c", noted above, for formal response to a Grand Jury report.

#### OTHER AGENCY INVOLVEMENT:

The Grand Jury prepared the report in question and it is attached to this item. The county Planning Department is called upon to prepare a formal response, separate from the Board of Supervisors, and a draft of their response is attached for information purposes.

#### FINANCIAL CONSIDERATIONS:

None – responses to Grand Jury reports are legally required and the administrative expenses of preparing such responses are covered from general administrative budgets of the relevant departments.

#### INTENDED RESULTS:

This item has two intended results – one to provide a public forum for discussion and debate of the Grand Jury Report; the second to provide an opportunity for Supervisors to review proposed responses to the Report and offer guidance to staff, as deemed necessary, on those responses prior to their adoption on a subsequent agenda.

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D-2

# Draft Responses To Grand Jury Report 2006

Re: County Planning Commission  
Prepared by Planning and Building Department  
April 5, 2006

FINDINGS	RESPONSE
<p>1. <i>Although each Planning Commission member is appointed by, and serves the Board of Supervisors as a while, each individual Commissioner is, presumably, most aware of and most closely involved in, issues regarding the district represented by the Supervisor who nominated the individual member. Therefore, that member is the person most likely to be representative of the consensus of the majority of their district.</i></p>	<ul style="list-style-type: none"> <li>❖ This "Finding" appears to be an opinion because the author "presumes" or infers that a Commissioner in fact "represents" a majority of opinions or beliefs in a specific supervisorial district.</li> <li>❖ Even though each commissioner is appointed from the district they live in, they should still strive to represent the interests of the whole county to the best of their ability. Even though they may be most knowledgeable about their own district, they should also be committed to making informed and effective decisions affecting the other districts as well.</li> <li>❖ The Commission's Rules of Procedures were reviewed at the Planning Commission retreat last January for minor procedural changes and will be re-examined at the next annual Planning Commission training session for further possible revisions.</li> </ul>
<p>2. <i>Under the present five-member structure of the Planning Commission it is possible, when only three Commissioners are present at a meeting, for two Commissioners to rule by simple majority vote in a manner contrary to the will of the majority of the Commissioners were all five Commissioners present. This creates the opportunity for personal agenda to rule where fairness might otherwise dictate a different outcome.</i></p>	<ul style="list-style-type: none"> <li>❖ Yes, whenever only three commissioners are present, it is "possible" for two commissioners to "rule by simple majority vote," but only for "quasi-judicial" decisions on development projects subject to approval of land use permits and subdivisions.</li> <li>❖ State law requires that Commission decisions on legislative matters such as general plan and ordinance amendments, specific plans or countywide policy documents require a majority vote of a full membership, meaning at least three affirmative votes are required for motions on these decisions.</li> <li>❖ What motivates an individual commissioner prior to voting on a particular item is a dilemma that is resolved by that commissioner. Whether the commissioner chooses to sustain a particular position or oppose it, remains an individual choice. There are at times "grey areas" involved in discretionary applications, which is why at times a "debate" and differences of opinion occur between the commissioners.</li> <li>❖ The Planning Commission and commissioners are a valuable resource in realizing the importance of partnerships with our communities. The numerous hours devoted by commissioners during public hearings not only enhances the long term goals of the county, but also increases citizen involvement in the future of the County.</li> </ul>
<p>3. <i>An applicant for a discretionary permit has a reasonable expectation (albeit not a guarantee) that the requested permit shall be granted when all the County's published and stated requirements for that permit have been fulfilled and the Planning Department staff has recommended that the permit be issued.</i></p>	<ul style="list-style-type: none"> <li>❖ This is a reasonable assumption but probably an unrealistic expectation of a majority of applicants. Actions on these permits are at the discretion of the Commission based on testimony received at public hearings in addition to staff recommendations and ordinance requirements.</li> <li>❖ Balancing all of these factors could lead the commission to a different conclusion on a particular project depending on how they weigh all of the information they must consider.</li> <li>❖ Although a vast majority of discretionary permits applicants assume there are certain implied rights to obtain "permits" for development; California courts have held that acquiring permits for development of property is not a "right", but instead a "privilege".</li> </ul>
<p>4. <i>Conflicts of interest, or at least the appearance of a conflict, can arise when Commissioners are asked to decide issues where the best interest of the County, and its citizens, may conflict with the interest, intent, or desires of a Commissioner's employer. This is especially true where the Commissioner's employer can exercise regulatory authority in the County over issues coming before the county's Planning Commission.</i></p>	<ul style="list-style-type: none"> <li>❖ The Planning and Building Department is not responsible for enforcing the state laws pertaining to the Planning Commission's potential for conflicts of interest. Rather, that is the sole and direct responsibility of each individual commissioner.</li> <li>❖ Additional training of permit process, CEQA (California Environmental Quality Act) process, Discretionary permits, General Plan policies, Board "policies", Conflicts of Interest, Meeting procedures, and general expectations of public and applicants, etc. are topics that could be covered in future Planning Commission training sessions.</li> </ul>

RECOMMENDATIONS	RESPONSE
<p>1. The Board of Supervisors should require that the Planning Commission make every reasonable effort to consider the opinion of the Commissioner in whose district a project is located when deciding an issue regarding that project in that Commissioner's absence. (Finding #1)</p>	<ul style="list-style-type: none"> <li>❖ While the Board of Supervisors will have to evaluate the pros and cons of this particular recommended requirement, the individual commissioners should strive to understand and represent the interests of the whole county, not just their own district.</li> <li>❖ There has been some discussion whether or not a commissioner "represents" a particular supervisor's district versus being a commissioner for the whole county.</li> </ul>
<p>2. The Board of Supervisors should increase membership on the Planning Commission to seven members from the current five members. The two additional members should be appointed at large from the county. A <u>unanimous</u> vote of the entire Board of Supervisors should be required for each at large appointee. A quorum of the Planning Commission shall then be not less than four members. Binding votes of the Planning Commission must be by a majority of the eligible voting members. (Finding #2)</p>	<ul style="list-style-type: none"> <li>❖ The Board of Supervisors will have to make a determination relative to the cost/benefit and subsequent cost/effectiveness of having additional commissioners.</li> <li>❖ Enlarging the size of the commission would not necessarily reduce the potential for divided opinions and split decisions and would likely lead to even longer deliberations than occur now.</li> <li>❖ Although the intent of the recommendation appears to be having a fair and balanced review, the absence of commissioners -- on a seven commissioner commission -- could still create a void in the decision-making process and still be subject to criticism.</li> </ul>
<p>3. The Board of Supervisors should implement the following rules regarding Planning Commission decisions: In a case where the Planning Commission votes to deny issuance of a discretionary permit and the applicant has met <u>each</u> of the following three conditions:</p> <ul style="list-style-type: none"> <li>❖ The applicant has met each of the requirements and conditions of the County as set forth by the Planning Department staff for issuance of the permits(s) during the review process <u>and</u>.</li> <li>❖ The applicant has complied with all published rules, regulations, and ordinances required for issuance of the permit(s) and,</li> <li>❖ The County Planning Department staff has recommended that the permit(s) be granted.</li> </ul> <p>If the applicant then appeals the denial to the Board of Supervisors, the current rules should be changed to reflect the following conditions:</p> <ul style="list-style-type: none"> <li>❖ No charge should be levied for the applicant's appeal.</li> <li>❖ The Director of the Planning Department as an "interested person adversely affected," (as defined in section 66452.5, subdivision (d) of the California Government Code) may file the appeal with the Board of Supervisors to overturn the Planning Commission's decision. (See also Attorney General's Opinion No. 88-803 -- December 1, 1998).</li> <li>❖ The Planning Department shall not be required to prepare new findings to support the Commission's position in denying the application and the Board of Supervisors shall review the decision based on the original findings and the stated reasons for denial by the Commission.</li> </ul> <p>These rules should have effect only where the above three conditions has been met. To be binding the vote of the Board of Supervisors must be by a majority of eligible voting members. (Finding #3)</p>	<ul style="list-style-type: none"> <li>❖ The Board of Supervisors will have to make a determination relative to modifying how the Commission conducts business. The nuances of these recommendations need to be evaluated on whether or not procedural due process is maintained.</li> <li>❖ These conditions don't take into account the importance of testimony received at public hearings and the obligation of the commission to duly consider when making their decisions. (Staff is not always right!)</li> <li>❖ The Board of Supervisors will have to determine whether or not to waive fees. This will have a fiscal impact on the department's budget. The current appeal fee only recovers a small portion of the actual cost of processing an appeal.</li> <li>❖ Section 66452.5 Ca. Gov. Code already in effect gives the Director this authority.</li> <li>❖ The department should present the commission's position to the Board in addition to explaining the basis for the original staff recommendation.</li> <li>❖ County Counsel should probably review and render an opinion on this suggestion.</li> </ul>

<p>4. To avoid the appearance of conflicts of interest, and to assure the Commission puts the interest of the citizens of San Luis Obispo County first, the Board of Supervisors should implement the following rule:</p> <p><i>When a Commissioner is confronted with an issue before the Planning Commission which same issue is subject to authority, or direct interest of the Commissioner's employer, or in which that Commissioner could otherwise have a personal interest, that Commissioner must refrain from participating in the discussions and deliberations concerning that issue and must not cast a vote on any question concerning that issue. Nor should Recommendation #1 above be operative in this instance. (Finding #4)</i></p>	<ul style="list-style-type: none"> <li>❖ The Board of Supervisors will have to make a determination on how the current Planning Commission procedures are being administered.</li> <li>❖ The term "personal" interest will need to be defined and clarified as state law addresses avoidance of conflicts affecting an individual's financial interests and does not refer to other types of possible interests.</li> <li>❖ Review Conflict of Interest Code with Commission at annual Planning Commission Training can be accomplished.</li> <li>❖ Planning Commissioners should officially disclose ex parte communication prior to hearing items as required by their current Rules of Procedure.</li> </ul>
<p>5. The Board of Supervisors should implement the following rule regarding Planning Commission members:</p> <p><i>Each Commissioner should be required to sign a "Conflict of Interest Statement" which would operate to prevent conflicts of interest of an economic nature, conflicts resulting from incompatible offices, or the appearance thereof. The Statement should reference the FPPC Form 700 disclosure of economic interests of the Commissioner and should state who the Commissioner's employer is as well as any other economic interests relevant to a potential conflict. This Statement should be in addition to the requirements for filing of Form 700. The Commissioner should agree in the Statement to refrain from participating in any issue before the Commission in which either they or their employer has an interest. Violation of the terms of the Statement should be grounds for immediate discharge from the Planning Commission. (See Appendix 'A' for a discussion and reference to the California Government Code regarding this Recommendation.) (Finding #4)</i></p>	<ul style="list-style-type: none"> <li>❖ The County of San Luis Obispo has adopted a Conflict-Of-Interest Code/Procedures and has designated those individuals who are required to file Form 700 with the Fair Political Practice Commission.</li> <li>❖ The Planning Commissioners are required by the county's code to file a Form 700 annually in accordance with state law on conflicts of interest and they have done so.</li> </ul>

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**Draft Responses to GJ Report on “The San Luis Obispo County Planning Commission: An Advisory Body- Not a Legislative Body?”**

**FINDINGS:**

Finding #1: The Board agrees in part. We agree that the Commission members are appointed by, and serve at the will of, the Board as a whole. We can neither agree nor disagree with the balance of this finding because it is a speculative assumption not based on facts presented in the body of the Report.

Finding #2: The Board agrees in part. We agree the current structure of the Commission provides that 3 members present represents a quorum and that a 2 member majority can decide an issue before that meeting. We can neither agree nor disagree with the balance of this finding because it is a speculative assumption not based on facts presented in the body of the Report.

Finding #3: The Board agrees with this finding.

Finding #4 The Board can neither agree nor disagree with this finding because it is a speculative assumption that is not based on facts presented in the body of the Report.

**RECOMMENDATIONS:**

Recommendation #1: This recommendation is already implemented in that the Planning Commission is required to consider all opinions presented to it on items under consideration.

Recommendation #2: This recommendation will not be implemented because a larger commission will, necessarily, incur additional administrative expense and the Grand Jury report presents no reasons as to why a 7 member commission will better serve the needs of the community than the current 5 member configuration.

Recommendation #3: This recommendation will not be implemented because it undermines the role of the Planning Commission in exercising the “discretion” in “discretionary permitting”. The Commissions role is to consider a permit request within the existing planning rules of the county, the particular circumstances of a specific project and the public input offered on that particular project. After weighing these considerations the Commission may approve, attach additional conditions to, or deny a request. Staff to the Commission (Planning Department personnel) is given the role of preparing the necessary findings on the Commission’s behalf. That is a necessary step because those findings are the subject of any appeal to a higher authority. Any original material is included in the information attached to an appeal. The cost of an appeal is appropriately borne by the entity or individual who will benefit from the project rather than by the general taxpayer. The Planning Director already has the authority to bring a



decision of the Commission to the Board of Supervisors if he believes such review is necessary.

Recommendation #4: This recommendation will not be implemented because Commissioners are already subject to state law dealing with conflict of interest and due process issues for public office holders (Political Reform Act and Brown Act sections specifically). The proposed language requires an assumption that employment by any agency that has “authority” over a Commission item is, de facto, a “conflict” on that item – this would represent a huge expansion of the concept of conflict as it is used in current law. In addition, any inappropriate behavior this recommendation seeks to address can already be dealt with through the Board’s authority to dismiss Planning Commissioners as the Board sees fit.

Recommendation #5: This recommendation will not be implemented because it is superfluous. The Commissioners are already bound by conflict of interest provisions and the Board of Supervisors already has the authority to remove Commissioners if circumstances warrant such a serious action.

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# THE SAN LUIS OBISPO COUNTY PLANNING COMMISSION

## AN ADVISORY BODY - NOT A LEGISLATIVE BODY

The Grand Jury has examined the San Luis Obispo County Planning Commission and reviewed certain of its recent actions. The current structure and operating rules of the Planning Commission allow its decision-making process to be manipulated by personal agenda.

We have also reviewed the legal basis for the Commission and the county's ordinances regarding establishment and operation of the Commission. (Please see Appendix A for excerpts of relevant sections of California laws.) The Grand Jury performed its inquiry with an eye toward examining the Commission's objectivity, accountability, consistency, responsibility, fairness, and the relationship of their actions to housing affordability. Following are our observations, findings, and recommendations regarding the San Luis Obispo County Planning Commission.

### AUTHORITY

California Penal Code §925 states; "The grand jury shall investigate and report on the operations, accounts and records of the officers, departments or functions of the county."

### BACKGROUND

#### *What a Planning Commission IS NOT*

The planning commission, as constituted in San Luis Obispo County, is *NOT* a legislative body. Members are not chosen by the electorate, have no legislative, regulatory, or rule making authority, and each member serves in an advisory capacity at the pleasure of the Board of Supervisors. A planning commission is *NOT* a pulpit for pursuit of personal agendas and it is not a regulatory body.

#### *What a Planning Commission IS*

California counties are not required by state law to establish planning commissions. California law requires only that each county have a "planning agency." The planning agency may be composed of the Board of Supervisors, a planning department, a planning commission, or any combination thereof.

California Government Code Section 65101 allows the formation of planning commissions for the purpose of advising the Board of Supervisors on issues in the unincorporated areas of the county:

From California Government Code §65101(a): "The legislative body **may** create one or more planning commissions each of which shall report directly to the legislative body. The legislative body shall specify the membership of the commission or commissions. In any event, each planning commission shall consist of at least five members, **all of whom shall act in the public interest....**" [emphasis added]

Planning commissions are just such advisory bodies. Although Government Code Sections 65102 through 65106 describe certain functions to be performed by *planning agencies*, neither the maximum size, nor the functions and duties of a *planning commission*, are dictated by state law.

The Board of Supervisors has wide discretion in assigning the functions and duties of a planning commission:

From California Government Code §65102: "A legislative body may establish for its planning agency any rules, procedures, or standards which do not conflict with state or federal laws."

Because a planning commission is appointed and has official status as an agency of a county, commissioners are subject to all the rules and regulations which govern all public bodies in California including, but not limited to, rules regarding conflicts of interest, laws such as the Brown Act, and "sunshine" rules. In San Luis Obispo County each member's term on the commission coincides with the term of the Supervisor who nominated them and commissioners serve at the pleasure of the entire Board of Supervisors. Commissioners are required to "act in the public interest." They are also subject to conflict of interest rules as set forth in the Fair Political Practices Act.

State law requires that certain decisions of a planning commission must be subject to appeal to the Board of Supervisors. Additional remedies for adverse actions of a planning commission are also provided by both codified law and common law.

## NARRATIVE

### *Genesis of the San Luis Obispo County Planning Commission*

The current San Luis Obispo County Planning Commission was established by County Ordinance Number 2692 in 1994. Two earlier ordinances preceded the current ordinance with the earliest dating from 1966. While the current Commission is composed of only five members, one from each Supervisor's district, the 1966 ordinance authorized a total of nine members, including one at-large member to represent agricultural interests.

### *Rules of the Planning Commission*

The Planning Commission has adopted rules for its meetings and proceedings. These rules are stated in the "*RULES OF PROCEDURE*" dated 11/15/99. This document is available for public use and review.

The Planning Commission meets regularly in open, public sessions to discuss matters brought before it. These matters concern such issues as zoning, general plan revisions, and applications for discretionary permits. County Counsel and representative of the planning department staff are available at each meeting to advise and present issues. Members of the public may be recognized and speak at meetings.

The number of voting members needed to take action on an item depends on the issue to be decided. Votes on the General Plan, Land Use Ordinances, and Coastal Zone Land Use require at least three votes in the affirmative to pass. All other issues may be decided by a simple majority where only three members are present.

All business of the Planning Commission must be conducted in open sessions and, to avoid the appearance of bias, commissioners are not to participate in *ex parte* contacts when deliberating and making decisions. According to the Government Code, any such *ex parte* contacts "...shall be reported to the Commission in open public session, including sufficient detail so as to provide adequate information to the other Commissioners and the public as to the substance of the contact."

Commissioners must not meet in a succession of "smaller than a quorum" meetings to discuss Commission business. This is defined as a "serial meeting" in the Brown Act. In other words, commissioners shall not confer with each other, one-on-one, outside public meetings to plan actions to be taken at public meetings.

It is the duty of the Commission to consider the evidence concerning issues brought before it and to deliberate only the issues at hand. It should not stray from examination of the facts of the issue under consideration into other areas of interest to individual members. Nor should the issues become a stepping-stone to pursue personal agenda. It is the duty of the Commission's members to consider the issues before it by fairly and impartially applying the requirements of county rules, regulations, ordinances, general plan requirements, and rules of the Board of Supervisors to make decisions on the project in question.

#### *Types of Permits*

There are two main categories of permit applications. Permit applications, which require only staff review and which do not require a public hearing, are referred to as "ministerial." Applications for permits requiring only ministerial action can be approved and permits issued without Commission review or other public hearings. When an applicant has met the requirements of a ministerial review issuance of the permit is required.

The second category is referred to as "discretionary" and involves the application of established policy. Discretionary review is required when the issues surrounding an application are not clearly defined and gray areas exist: e.g., cases involving zoning variances, tract maps, and larger commercial and residential projects. In the case of discretionary permits the applicant must present plans and may make adjustments requested by the Planning Department staff before the staff can recommend approval of the application. This can be, and usually is, a long and expensive process. Once the staff has made a recommendation for approval, the application must then be evaluated by the Planning Commission. The Commission must decide if the facts of the case warrant issuance of the permit. If the Commission denies the permit the applicant can then appeal to the Board of Supervisors.

The process of obtaining a discretionary permit often adds costs in excess of tens of thousands of

dollars to the base cost of a project. When the project is for housing, this additional cost must be recovered by building it into the price of the homes. It is also not uncommon for an applicant to spend large sums of money meeting the requirements of the planning staff review only to have the project rejected by the Planning Commission, or conditionally approved with expensive and, at times, onerous conditions attached to the approval. The applicant's options are then to either accept the conditions or, if denied, to drop the project, or appeal to the Board of Supervisors to override the Commission. This is definitely a contributing factor to the affordability of housing in this county.

### *Some Examples of Recent Actions of the Commission*

The Grand Jury reviewed several recent actions of the Planning Commission where the Commission's actions either came under unusual public scrutiny, or where they were the subject of specific complaints received by the Grand Jury. Following are brief summaries and comments regarding select cases:

Cambria/San Simeon Plan – The Planning Commission and staff worked for several months prior to November 2005 to prepare the Cambria/San Simeon Community Plan Update. A number of issues, which might be of concern to the California Coastal Commission had been raised by one Planning Commissioner during the study period and had been either rejected or voted down by the other Commissioners. The day before the plan was scheduled for final action by the Planning Commission (an action which would eventually send the plan to the Board of Supervisors), the Planning Department received a letter from the Coastal Commission stating it had the same concerns which the Planning Commission had already discussed and rejected. A question arose as to whether there may have been a request to the Coastal Commission to intervene in the process in a effort to revive discussion of these already rejected issues.

On January 10, 2006, grand jury members contacted the Coastal Commission office to inquire whether there had been contact with any local Planning Commissioner and to question the timing of these last minute concerns. The grand jury members were told there was an order from Coastal Commission management to put the issues before the Planning Commission post haste. However, when we attempted to discover who was behind the order and how the timing came about, we were unable to obtain definitive answers from the Coastal Commission staff and

management.

Nipomo Housing Project – In this case the Planning Commission staff worked for some time with a developer to evaluate a proposed housing project in Nipomo. The project was for 38 homes spaced at ten homes per acre – exactly the density which local zoning called for. The developer had invested thousands of dollars in the design and approval process. He complied with all requirements set forth by the staff, conformed to all zoning regulations, met all other requirements and the planning staff had recommended approval of the project.

At a Commission hearing where the agenda called for discussion of this project only three of the five Commissioner members were present. The Commissioner from the South County (Nipomo) area was absent from the meeting. Two of the Commissioners present wanted to bring the project to a vote while the third Commissioner felt the vote should be delayed since the member from the Nipomo area was absent. Both the staff and the applicant also requested that the Commission not vote on the project at that meeting. However, with only three of the five Commissioners present, two Commissioners were able to force the issue to a vote and voted to deny the project. In this case these two Commissioners were able to kill a project, which, had the full Commission been present, might have been approved.

Based on a review of the transcript of this meeting, in the Grand Jury's opinion, it indicates that the insistence of these two Commissioners to rush the project to a vote while the Commissioner from the Nipomo area was absent appeared to be arbitrary, apparently preordained, and a deliberate attempt to exclude the absent Commissioner from voting on the issue. In the Grand Jury's opinion it also appears, based on the transcript, that discussions between Commission members and third parties may have taken place prior to the public hearing. If so, this could constitute a "serial meeting" as defined in the California Government Code. Upon appeal to the Board of Supervisors, the vote of the two Commissioners was overturned, the project was reinstated, and the permits granted.

PG&E and California PUC – The California Public Utilities Commission (PUC) reviewed a PG&E application for replacement of steam generator and support equipment at the Diablo Canyon Nuclear power plant. The role of the PUC in this case was to determine whether the

replacement was justified and whether PG&E could recover the costs from ratepayers. The project required a complete environmental impact report (EIR) for approval by the PUC which was the lead agency for creating this EIR. The PUC's final EIR was sent to the Planning Commission for use in its decision-making process regarding replacement of the steam generators.

The county's role in the process was to evaluate land use issues such as transport and storage of the generators, and construction of facilities to accommodate the replacement work. The only application pending with the county at this time concerned these issues integral to the planned replacement of the steam generators. The Planning Commission's discussions should have been limited to these land use issues.

In the opinion of the Grand Jury, it appeared that an attempt to turn this application into an issue of license renewal for Diablo (scheduled for the year 2014) was made by two Commissioners. Re-licensing of Diablo was not the issue before the Planning Commission and it is an issue over which the Planning Commission has no authority in any event. There was no application pending regarding re-licensing of the Diablo facility. It was not appropriate to attempt to turn this application hearing into an issue regarding possible future re-licensing of Diablo. One Commissioner's refusal to ultimately deal with the issue in a proper manner, and to create an issue regarding re-licensing, resulted in denial of the project and forced the entire issue to be appealed to the Board of Supervisors.

### CONCLUSION

It appears that the Planning Commission has attempted to interject itself into matters over which it has no authority and, in the Grand Jury's opinion, has become a vehicle for pursuing the personal agenda of some of its members. Further, decisions often do not appear to be made in a fair, consistent, and impartial manner and appear to reflect personal bias rather than a fair and impartial review of the facts. The definition of "review of the facts" often seems to be selectively tailored to support a preconceived viewpoint rather than a search for the best and fairest solution to a problem. Decisions often appear arbitrary.

Applicants often do not have a clear understanding of the rules governing the Planning

Commission's actions regarding issuance of permits. These rules and requirements for issuing permits often are a moving target and Planning Commission decisions do not reflect consistent application of the rules between different cases for the same or similar issues.

There appears also to be a lack of accountability for the Commission inasmuch as rules may have been broken and conflicts of interest may exist.

There is the appearance of a conflict of interest, if not an actual conflict, when the jurisdiction of the Coastal Commission extends to matters before the Planning Commission and one of the Commissioners is also an employee of the Coastal Commission.

The rules under which the Commission operates are vague, insufficient, often irrelevant, and are in need of substantial clarification and revision.

## FINDINGS

1. Although each Planning Commission member is appointed by, and serves the Board of Supervisors as a whole, each individual Commissioner is, presumably, most aware of and most closely involved in, issues regarding the district represented by the Supervisor who nominated the individual member. Therefore, that member is the person most likely to be representative of the consensus of the majority of their district.
2. Under the present five-member structure of the Planning Commission it is possible, when only three Commissioners are present at a meeting, for two Commissioners to rule by simple majority vote in a manner contrary to the will of the majority of Commissioners were all five Commissioners present. This creates the opportunity for personal agenda to rule where fairness might otherwise dictate a different outcome.
3. An applicant for a discretionary permit has a *reasonable expectation* (albeit not a guarantee) that the requested permit shall be granted when all the County's published and stated requirements for that permit have been fulfilled and the Planning Department staff has recommended that the permit be issued.



4. Conflicts of interest, or at least the appearance of a conflict, can arise when Commissioners are asked to decide issues where the best interest of the County, and its citizens, may conflict with the interest, intent, or desires of a Commissioner's employer. This is especially true where the Commissioner's employer can exercise regulatory authority in the County over issues coming before the county's Planning Commission.

### RECOMMENDATIONS

1. The Board of Supervisors should require that the Planning Commission make every reasonable effort to consider the opinion of the Commissioner in whose district a project is located when deciding an issue regarding that project in that Commissioner's absence. (Finding #1)
2. The Board of Supervisors should increase membership on the Planning Commission to seven members from the current five members. The two additional members should be appointed at large from the county. A unanimous vote of the entire Board of Supervisors should be required for each at large appointee. A quorum of the Planning Commission shall then be not less than four members. Binding votes of the Planning Commission must be by a majority of eligible voting members. (Finding #2)
3. The Board of Supervisors should implement the following rules regarding Planning Commission decisions:  
In a case where the Planning Commission votes to deny issuance of a discretionary permit and the applicant has met each of the following three conditions:
  - The applicant has met each of the requirements and conditions of the County as set forth by the Planning Department staff for issuance of the permit(s) during the review process and.
  - The applicant has complied with all published rules, regulations, and ordinances required for issuance of the permit(s) and.
  - The County Planning Department staff has recommended that the permit(s) be granted.

If the applicant then appeals the denial to the Board of Supervisors, the current rules should be

changed to reflect the following conditions:

- No charge shall be levied for the applicant's appeal.
- The Director of the Planning Department as an "interested person adversely affected," (as defined in section 66452.5, subdivision (d) of the California Government Code) may file the appeal with the Board of Supervisors to overturn the Planning Commission's decision. (See also Attorney General's Opinion No. 88-803 – December 1, 1998).
- The Planning Department shall not be required to prepare new findings to support the Commission's position in denying the application and the Board of Supervisors shall review the decision based on the original findings and the stated reasons for denial by the Commission.

These rules should have effect only where the above three conditions have been met. To be binding the vote of the Board of Supervisors must be by a majority of eligible voting members. (Finding #3)

4. To avoid the appearance of conflicts of interest, and to assure the Commission puts the interest of the citizens of San Luis Obispo County first, the Board of Supervisors should implement the following rule:

*When a Commissioner is confronted with an issue before the Planning Commission which same issue is subject to authority, or other direct interest of the Commissioner's employer, or in which that Commissioner could otherwise have a personal interest, that Commissioner must refrain from participating in the discussions and deliberations concerning that issue and must not cast a vote on any question concerning that issue.*

Nor should Recommendation #1 above be operative in this instance. (Finding #4)

5. The Board of Supervisors should implement the following rule regarding Planning Commission members:

*Each Commissioner should be required to sign a "Conflict of Interest Statement" which would operate to prevent conflicts of interest of an economic nature, conflicts resulting from incompatible offices, or the appearance thereof. The Statement should reference the FPPC Form 700 disclosure of economic interests of the Commissioner and should state*

*who the Commissioner's employer is as well as any other economic interests relevant to a potential conflict. This Statement should be in addition to the requirements for filing of the Form 700. The Commissioner should agree in the Statement to refrain from participating in any issue before the Commission in which either they or their employer has an interest. Violation of the terms of the Statement should be grounds for immediate discharge from the Planning Commission. (See Appendix 'A' for a discussion and reference to the California Government Code regarding this Recommendation.) (Finding #4)*

### **REQUIRED RESPONSES**

Pursuant to California Penal Code §933 and 933.5, the following agencies are required to respond to the findings and recommendations in this report:

- ☐ **The San Luis Obispo County Department of Planning and Building: Due 05/25/06**  
**(Findings #1 through 4 and Recommendations #1 through 5.)**
- ☐ **The San Luis Obispo County Board of Supervisors: Due 06/26/06**  
**(Findings #1 through 4 and Recommendations #1 through 5.)**

APPENDIX A:

REFERENCE EXCERPTS FROM THE CALIFORNIA GOVERNMENT CODE

66452.5 . . .

(a) through (c) . . .

(d) Any interested person adversely affected by a decision of the advisory agency or appeal board may file an appeal with the governing body concerning any decision of the advisory agency or appeal board. (See also Attorney General's Opinion No. 88-803 – December 1, 1998.)

82041. "Local government agency" means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, *commission* or other agency of the foregoing.

87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a *financial interest*.

87103. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, *on the official*, a member of his or her immediate family, or on any of the following:

(a) . . .

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) *Any source of income*, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

87105. (a) A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a *potential conflict of interest* and immediately prior to the consideration of the matter, do all of the following:

(1) *Publicly identify* the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

(2) *Recuse himself or herself* from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

(3) *Leave the room* until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

87200. This article is applicable to elected state officers, judges and commissioners of

courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, **members of planning commissions**, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

**87300. Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law** and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

**87500. Statements of economic interests required by this chapter shall be filed as follows:**

(g) Members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, **planning commissioners**, and members of the **California Coastal Commission**-one original with the agency which shall make and retain a copy and forward the original to the commission which shall be the filing officer.

(emphasis added)

